

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GERARDO MUNOZ and EDUARDO  
MUNOZ,

Plaintiff,

BEST CAPITAL, LLC, KREIL KAMP  
TRUCKING, INC. and “JOHN DOE”, name  
fictitious, intended being that of operator,

Defendants.

Civil Action No: \_\_\_\_\_

PETITION FOR REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1446(a) DIVERSITY

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

Defendants-Petitioners, **BEST CAPITAL LLC and KREILKAMP TRUCKING, INC.** i/s/h/a **KREIL KAMP TRUCKING, INC.**, file this petition to remove the foregoing case to the United States District Court for the Eastern District of New York, and respectfully show this Court:

1. A civil action was commenced in the Supreme Court of Kings County, State of New York, in which the above-named individuals, GERARDO MUNOZ and EDUARDO MUNOZ are the Plaintiffs and the Petitioners are Defendants **BEST CAPITAL LLC and KREILKAMP TRUCKING, INC.** The action is entitled *Gerardo Munoz and Eduardo Munoz v. Best Capital LLC, Kreil Kamp Trucking, Inc. and “John Doe”, name fictitious, intended being that of operator*, and bears Index Number 508910/2022E. A copy of Plaintiffs’ Summons and Complaint is attached hereto as **Exhibit “A”**.

2. This is a civil action wherein Plaintiffs seek damages for personal injuries arising out of a motor vehicle accident on March 20, 2020, allegedly as a result of the Defendants’ negligence. The ad damnum clause demands an amount which exceeds the jurisdictional limits

of all lower Courts in New York State, and Plaintiffs' attorney has refused to stipulate to cap damages at \$75,000.

3. Accordingly, the amount in controversy in this suit is in excess, exclusive of interest and costs, of \$75,000.

4. This action involves a controversy between citizens of the State of New York and foreign corporations of the State of Wisconsin in that: (a) the Plaintiffs Gerardo Munoz and Eduardo Munoz are now, and were at the time said action was commenced, residents of the State of New York and (b) Defendant-Petitioners Best Capital LLC and Kreilkamp Trucking, Inc. were at the time of the accident and remain Wisconsin corporations with their principal places of business in the State of Wisconsin.

5. The above action was commenced against Defendant-Petitioners on March 28, 2022 (Exhibit "A").

6. Defendants served a Verified Answer with Counterclaims on May 6, 2022, a copy of which is annexed hereto as **Exhibit "B"**.

7. On May 6, 2022, Defendants served a Demand for Damages pursuant to CPLR 3017(C), a copy of which is annexed hereto as **Exhibit "C"**. Defendants have not received a response.

8. On August 31, 2022, Defendants issued correspondence to Plaintiffs' counsel with a proposed Stipulation to be executed by their clients, capping damages at \$75,000. Defendants advised that if Plaintiffs did not sign the stipulation and return same within ten (10) days, then they would file a Petition for removal to Federal Court. A copy of the August 31<sup>st</sup> correspondence, including the proposed Stipulation, is annexed hereto as **Exhibit "D"**.

9. Said action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. There is complete diversity of citizenship between the Plaintiffs and the Defendants.

10. Defendants, **BEST CAPITAL LLC and KREILKAMP TRUCKING, INC.**, are the Petitioners for the removal of this case to this Court.

11. This motion is filed within thirty (30) days by Petitioners GERARDO MUNOZ and EDUARDO MUNOZ, of confirmation that the case is removable based on Plaintiffs seeking damages in excess of \$75,000, as required by 28 U.S.C. § 1446(b)(3).

12. Written notice of this motion will be given to the Plaintiffs promptly after the filing of this motion, as is required by law.

13. A true and correct copy of this motion will be filed with the Clerk of the Supreme Court of Kings County, State of New York promptly after the filing of this motion, as is required by law.

14. Attached to this motion, and by reference made a part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action.

15. By filing this Petition for Removal, Petitioners do not waive any defense which may be available to them, specifically including, but not limited to, their right to contest *in persona* jurisdiction over the Petitioners, improper service of process upon the Petitioners, and the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, Petitioners pray that this action proceed in this Court as an action properly removed hereto.

Dated: New York, New York  
September 19, 2022

Yours etc.,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



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